

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-13-143**

PANEL: Ms Jacqueline Freedman, Chairperson
Ms Laura Diamond
Ms Janet Frohlich

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Terry Kumka.

HEARING DATE: March 25, 2014

ISSUE(S): Whether an extension of time should be granted to the
Appellant to file her Notice of Appeal.

RELEVANT SECTIONS: Section 174 of The Manitoba Public Insurance Corporation
Act ('MPIC Act')

**AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH
INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER
IDENTIFYING INFORMATION.**

Reasons For Decision

Background:

The Appellant, [text deleted], was injured in a motor vehicle accident on December 15, 2007. She was in receipt of Personal Injury Protection Plan ("PIPP") benefits including Income Replacement Indemnity ("IRI") benefits.

On February 12, 2013, the Appellant's case manager issued a decision indicating that the Appellant's fibromyalgia was not related to the accident. Further, the decision stated that there

was no objective evidence precluding the Appellant from working in the employment that had been determined for her. Accordingly, her IRI was terminated pursuant to paragraph 110(1)(c) of the MPIC Act. An Internal Review decision was issued dated June 25, 2013, which upheld the case manager's decision.

The Appellant seeks to file an appeal of the Internal Review decision to the Commission. The issue which requires determination is whether the Commission will grant an extension of time to the Appellant in order to allow her to file a Notice of Appeal of the decision of the Internal Review Officer dated June 25, 2013.

Decision:

For the reasons set out below, the Commission grants an extension of time to the Appellant in order to file a Notice of Appeal.

Evidence and Submissions of the Appellant:

At the hearing, the Appellant testified that she contacted the Commission on September 25, 2013, to obtain the necessary appeal form in order to file a Notice of Appeal of the Internal Review decision. She indicated that the Notice of Appeal form arrived on September 28, 2013 and on that date she sent it to the Commission by mail from a post office in [text deleted], Manitoba.

The Appellant testified that she contacted the Commission on December 2, 2013, to enquire as to the status of her appeal, because she hadn't received any communication from the Commission. She was advised at that time that nothing had been received from her. Accordingly, the Appellant immediately prepared a new Notice of Appeal and covering letter and sent those

documents to the Commission on December 2, 2013. Those documents were received by email by the Commission on that day, December 2, 2013.

The Appellant's reasons for appealing the decision of the Internal Review Officer are indicated in her letter of December 2, 2013:

I have doctors [sic] documentation that I can not [sic] sit, stand or walk for any length of time. I now have a doctor from the pain clinic that said I cant [sic] work. I am waiting for an appointment to get injections in my lower back.

Submissions of MPIC:

Counsel for MPIC, consistent with what MPIC had earlier advised the Commission, did not take a position regarding the Appellant's request for an extension of time to file her Notice of Appeal. Counsel did refer the panel to a case, *[text deleted]* (AC-10-132), which outlines the factors that may be considered by the Commission, but he indicated that MPIC is not taking a position with respect to how the factors apply in this case.

Reasons for Decision:

Subsection 174(1) of the MPIC Act provides as follows:

Appeal from review decision

[174\(1\)](#) A claimant may, within 90 days after receiving notice of a review decision by the corporation or within such further time as the commission may allow, appeal the review decision to the commission.

In this case, the Appellant's Notice of Appeal was not received by the Commission within 90 days after she received the Internal Review decision dated June 25, 2013. Accordingly, she has asked the Commission to exercise its discretion to allow an extension of time to file the Notice of

Appeal, which was received by the Commission on December 2, 2013, approximately ten weeks after the 90 day deadline.

The discretionary power granted to the Commission under subsection 174(1) of the MPIC Act to extend the time for appealing a review decision is fairly broad, being “within such further time as the Commission may allow”. In exercising its discretion, the Commission may consider various relevant factors, such as:

1. The actual length of the delay compared to the 90 day time period;
2. The reasons for the delay;
3. Whether there has been any prejudice resulting from the delay;
4. Whether there has been any waiver respecting the delay; and
5. Any other factors which argue to the justice of the proceedings.

Generally, the Commission will exercise its discretionary power to extend the time limit to file a Notice of Appeal where it is satisfied that: (i) the Appellant has provided a reasonable excuse for failing to file within the time limit; and (ii) there is a good reason to exercise its discretion to extend that time limit.

Discussion

Upon a consideration of the totality of the evidence before it, both oral and documentary, and upon a consideration of the relevant factors surrounding the delay, the Commission finds that the Appellant has provided a reasonable excuse for her failure to appeal the Internal Review Decision to the Commission within the 90 day time limit set out in subsection 174(1) of the MPIC Act.

The Commission notes that the actual length of the delay was relatively short, ten weeks, when compared to the 90 day time period. As to the reasons for the delay, the Commission accepts the testimony of the Appellant, who testified in a forthright manner, regarding her attempt to file the Notice of Appeal by mail on September 28, 2013. When she discovered that the Notice of Appeal had not been received by the Commission, the Appellant took steps immediately to remedy that and filed a new Notice of Appeal on December 2, 2013. This also indicates that there was no waiver by the Appellant of her intention to appeal.

MPIC has taken no position with respect to the application by the Appellant; it can therefore be inferred that there has been no prejudice to MPIC resulting from the delay.

Finally, in regard to the justice of the proceedings, it appears that the Appellant is in the process of obtaining additional medical evidence to support her position. She should be permitted the opportunity to do so.

Disposition:

Based on the foregoing, the Commission will, under subsection 174(1) of the MPIC Act, extend the time limit within which the Appellant may appeal the Internal Review Decision dated June 25, 2013, to the Commission.

Dated at Winnipeg this 16th day of April, 2014.

JACQUELINE FREEDMAN

LAURA DIAMOND

JANET FROHLICH